

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriel Paniza	Team: Team # 8	CCRB Case #: 200709944	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/26/2007 3:47 AM	Location of Incident: East 138th Street and Park Avenue	Precinct: 40	18 Mo. SOL 11/26/2008	EO SOL 11/26/2008	
Date/Time CV Reported Wed, 07/11/2007 6:21 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 07/11/2007 6:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Costin	01404	903693	040 PCT
2. POM Christoph Crain	03856	933719	040 PCT
3. An officer			040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Latraviota Wells	06676	929346	040 PCT
2. SGT Jacob Solorzano	03447	903306	040 PCT
3. LT Luis Rodriguez	00000	902302	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Costin	Abuse: Sgt. John Costin stopped § 87(2)(b) and § 87(2)(b)	
B.POM Christoph Crain	Abuse: PO Christopher Crain searched § 87(2)(b) s car.	
C.POM Christoph Crain	Abuse: PO Christopher Crain stopped § 87(2)(b)	
D.POM Christoph Crain	Abuse: PO Christopher Crain frisked § 87(2)(b)	
E.SGT John Costin	Abuse: Sgt. John Costin stopped § 87(2)(b)	
F.SGT John Costin	Force: Sgt. John Costin used physical force against § 87(2)(b)	
G.POM Christoph Crain	Force: PO Christopher Crain used physical force against § 87(2)(b)	
H.POM Christoph Crain	Force: PO Christopher Crain struck § 87(2)(b) with an asp.	
I. An officer	Force: An officer used physical force against § 87(2)(b)	

Synopsis

On May 26, 2007 at approximately 3AM § 87(2)(b) was with § 87(2)(b) walking from the club Sin City back to § 87(2)(b)'s car, which was parked on East 138th Street and Park Avenue in the Bronx. When he arrived he saw that Sgt. John Costin of the 40th Precinct had stopped § 87(2)(b) and § 87(2)(b) (**allegation A**) while PO Christopher Crain of the 40th Precinct was searching the front passenger side of § 87(2)(b)'s car (**allegation B**). PO Crain told § 87(2)(b) to get up against the wall (**allegation C**) and then frisked § 87(2)(b) (**allegation D**). Sgt. Costin told § 87(2)(b) to get up against the wall, and when § 87(2)(b) refused, he grabbed § 87(2)(b) to place him against the wall (**allegation E**). § 87(2)(b) moved to pull away from Sgt. Costin, and then Sgt. Costin grabbed him, trying to force him to the ground (**allegation F**). § 87(2)(b) tried to push Sgt. Costin away, and Sgt. Costin fell to the floor and pulled § 87(2)(b) down. PO Crain and PO Latraviota Wells of the 40th Precinct helped Sgt. Costin to get § 87(2)(b) off him. The officers forced § 87(2)(b) to the ground and as they held him face down and were handcuffing him, an officer allegedly struck § 87(2)(b) twice on the head with an asp (**allegation H**) and then an officer kicked § 87(2)(b) on the mouth (**allegation I**).

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Summary of Complaint

§ 87(2)(b) filed this complaint via the call processing system on July 11, 2007. § 87(2)(b) is a § 87(2)(b) year old black male, who is 5'7" tall, weighs 185 pounds, and has black hair and brown eyes. § 87(2)(b) According to the Ambulance Call Report (encl. 4) on May 26, 2007 § 87(2)(b) told the emergency technicians treating him, "I don't know where I'm bleeding from." § 87(2)(b) was interviewed by the CCRB on July 27, 2007 (encl. 5).

On May 25, 2007 § 87(2)(b) went to a strip club, Sin City, with an acquaintance named § 87(2)(b) girlfriend and § 87(2)(b) cousin. The investigation identified them as § 87(2)(b) and § 87(2)(b). They were in the club until around 4AM. Although he consumed 3 drinks, § 87(2)(b) was not intoxicated. The group left the club and walked over to where § 87(2)(b) had parked his car. When they reached the car, § 87(2)(b) said they had not paid the bill. § 87(2)(b) and § 87(2)(b) returned to the club to pay the bill. There was no problem at the club with them paying the bill.

When § 87(2)(b) and § 87(2)(b) returned to the car, they saw that three uniformed officers had § 87(2)(b) and § 87(2)(b) with their hands up against the wall while one of these officers searched his car (**Allegations A and B**). There were two white males and one black female officer. The investigation identified the female as PO Latraviota Wells. One male officer was taller than 5'7", with a stocky build and spiky blond hair. He was identified as Sgt. John Costin. The third officer had dark hair, was slim, and was also taller than 5'7". He was identified as PO Christopher Crain.

PO Crain was searching the front passenger side of § 87(2)(b)'s car. When § 87(2)(b) asked the officers why they were searching his car, PO Crain told § 87(2)(b) to get up against the wall (**Allegation C**). PO Crain then frisked § 87(2)(b) (**Allegation D**). Sgt. Costin told § 87(2)(b) to get up against the wall but § 87(2)(b) did not comply. PO Costin grabbed § 87(2)(b)'s right arm and tried to put § 87(2)(b)'s arm behind his back (**Allegation E**). § 87(2)(b) moved to pull away from this grip, so the officer grabbed § 87(2)(b) across the chest, as in a "bear hug," (**Allegation F**). Sgt. Costin was trying to trip § 87(2)(b) and force his body to the ground. § 87(2)(b) put out his arms, pushing Sgt. Costin away, trying to resist being brought to the ground. PO Costin then tripped and fell backward while grabbing § 87(2)(b)'s left arm. Sgt. Costin fell down and pulled § 87(2)(b) down on top of him.

When § 87(2)(b) tried to get up, PO Crain moved to grab him. However, § 87(2)(b) intervened so PO Crain turned, pushed § 87(2)(b) against the wall again, and handcuffed him. PO Crain also "beat" § 87(2)(b) on his arms which caused bruising (**Allegation G**). Sgt. Costin tried to grab § 87(2)(b) by the arms in order to get on top of him so he could handcuff him. Officers were able to get § 87(2)(b) to the ground, so he was facing downward as officers were trying to handcuff him. § 87(2)(b) did not know which officers were on top trying to handcuff him since he was faced down. § 87(2)(b) stated he felt two hands. A baton then struck § 87(2)(b) twice on the right hand side of the skull, near the crown. (**Allegation H**). § 87(2)(b) was screaming, "Why are you on me, get off of me, why are you doing this?" § 87(2)(b) then saw a foot

coming towards his face, and was kicked once in the face, on the left corner of his mouth (**Allegation I**) § 87(2)(b) was knocked unconscious by the kick.

§ 87(2)(b) woke up at about 10 AM in § 87(2)(b). He was handcuffed to a bed while a doctor was stitching him up. A different officer, a stocky black female, was with him. She told him he was under arrest for § 87(2)(b). § 87(2)(b) received six stitches to the outside of his lip and six stitches inside of his lip. He also had a bump on his head. He also noted pain on his abdomen and found a bite mark. He was informed that he received a tetanus shot, but no one told him he had been bitten. § 87(2)(b) was then taken from § 87(2)(b) to the 40th Precinct, where he was fingerprinted and photographed, and then he was taken to Bronx Central Booking. He saw the judge on May 27, 2007. The judge released him on his own recognizance.

§ 87(2)(b) stated that the delay in filing his complaint was due to the fact that he had not known about the CCRB. § 87(2)(b) stated that he had visited several lawyers for advice, and that someone finally told him about the CCRB. § 87(2)(b) also stated that he has retained an attorney and planned to file a notice of claim against the City. § 87(2)(b) filed the notice of claim on August 24, 2007 (encl. 7)

Notice of Claim

§ 87(2)(b)'s notice of claim states that on May 26, 2007 PO Latravio Wells and other servants of the City of New York engaged in torturous behavior, including assault, battery, false arrest and imprisonment, use of excessive force, negligence, and violation of § 87(2)(b)'s civil and constitutional rights. The notice of claim states that § 87(2)(b) suffered from multiple, serious and severe injuries including injuries to his left upper lip that required sutures, bite marks, exacerbation of pre-existing back injury, as well as various bruises, contusions, and other bodily injuries, emotional anguish and suffering, loss of employment of life, humiliation, embarrassment, loss of dignity and self-esteem, loss of freedom and loss of liberty.

Results of Investigation

Attempts to Contact other Victims

§ 87(2)(b) scheduled three appointments to be interviewed at CCRB. She cancelled the first appointment for August 17, 2007 but rescheduled for August 22, 2007. After missing that appointment, she called back to reschedule for August 30, 2007. She never appeared and never responded to a please call letter sent the same day or to five phone messages left for her and § 87(2)(b) between September 17, 2007 and October 6, 2007. Because she refused to provide the investigator with § 87(2)(b)'s phone number, the investigator was only able to send him two please call letters. The only phone number that a check of available indices provided for § 87(2)(b) was to a law firm that claimed they did not know him. Two please call letters sent to § 87(2)(b) at his only known address in § 87(2)(b), were returned as "Undeliverable".

Officer Statements

Sgt. John Costin

Sgt. Costin of the 40th Precinct is a § 87(2)(b) year old white male, who is 5'9" tall, weighs 180 pounds, and has brown hair and green eyes. Sgt. Costin worked from 10PM on May 25, 2007 until 6:57PM on May 26, 2007. He was assigned to supervise midnight Conditions. He was in uniform, riding in an unmarked vehicle with PO Crain and PO Wells. PO Wells was the operator.

Memo book

In his memo book (encl. 8) Sgt. Costin wrote: "0300: 10-52 (p/u) 2520 Park Ave. 0320: 96 X 1. 0347: Four under by PO Wells. In regards to persons stopped @ E. 138 St. + Park Ave." [Sic]

CCRB Statement

Sgt. Costin was interviewed on January 2, 2008 (encl. 9). At 3AM Sgt. Costin's unit was driving down Park Avenue, past Sin City, where he observed several males arguing with the club bouncers. The officers stopped and exited the vehicle. The bouncers informed Sgt. Costin that there had been a dispute inside the club, which is why these males had been ejected from the club. Sgt. Costin ordered the men to leave. The males refused; some stood in the street, blocking traffic while others blocked the entrance to the

club. After asking the group numerous times to leave, the males and a female with them left the scene. Sgt. Costin and the officers remained for approximately fifteen or twenty minutes, speaking to the bouncers.

When the officers left, they drove down Park Avenue and took a right down East 138th Street. Sgt. Costin saw the people involved in the argument hanging out around their vehicle. Because there have been incidents in the past where people involved in arguments at clubs had left the scene and returned to the club after obtaining weapons, Sgt. Costin was suspicious. The officers made a U-turn but by then the vehicle was gone. Sgt. Costin decided to return to Sin City to ensure that there were no more altercations there. As they were driving back Sgt. Costin observed the same vehicle now parked on Park Avenue, slightly off East 138th Street. He did not recall if the vehicle was running. The passenger door was open and he saw a Hispanic male and female arguing. They were both highly agitated and making hand movements. Sgt. Costin identified these two individuals from their arrest photos as § 87(2)(b) and § 87(2)(b). The officers made a second U-turn and the officers exited their vehicle.

Sgt. Costin asked § 87(2)(b) and § 87(2)(b) what was going on but both of them were very combative and cursing at him. § 87(2)(b) kept making movements towards his waist area. Both individuals kept walking around and making movements towards the open door of the vehicle. Sgt. Costin told them to stand still, that he wanted to speak to them, but they continued to move around. Sgt. Costin feared that one of these two individuals might have a weapon on their person, or perhaps that they were trying to gain access to a weapon inside the vehicle and ordered § 87(2)(b) and § 87(2)(b) to get up against the wall in order to be frisked. They complied. Sgt. Costin did not go into the vehicle. Because his attention was focused on these two individuals, Sgt. Costin did not see another officer look or search inside the vehicle. Before the officers had a chance to frisk § 87(2)(b) Sgt. Costin observed four males walking from Sin City. Two males walked in a different direction but the other two approached the officers. Sgt. Costin identified these two males as § 87(2)(b) and § 87(2)(b).

Both men were very agitated, obviously intoxicated; they were cursing and making furtive movements towards their waistband area. Sgt. Costin told § 87(2)(b) to relax but he continued to make furtive movements. Sgt. Costin feared that he might have a weapon so he asked him to get up against the wall. § 87(2)(b) refused, and Sgt. Costin had to give the order two more times before § 87(2)(b) complied. Sgt. Costin then told § 87(2)(b) to get against the wall. § 87(2)(b) told him to “gut fuck himself.” Sgt. Costin, fearing that § 87(2)(b) himself had a weapon, again ordered him up against the wall. Sgt. Costin then placed his open palm on § 87(2)(b)'s shoulder to guide him towards the wall.

§ 87(2)(b) grabbed Sgt. Costin by his vest, and Sgt. Costin reacted by grabbing on to § 87(2)(b). § 87(2)(b) started pushing Sgt. Costin back and swung at Sgt. Costin with his right hand. Sgt. Costin did not recall if the punch landed. Sgt. Costin stepped back and fell backwards off the curb. Sgt. Costin fell on his back and § 87(2)(b) fell on top of him. PO Crain helped get § 87(2)(b) off Sgt. Costin. Although Sgt. Costin did not observe PO Crain with his asp out, PO Crain later informed Sgt. Costin that he used his asp to get § 87(2)(b) off Sgt. Costin. Sgt. Costin did not have time to take out his baton or asp. Sgt. Costin did not see any officer strike § 87(2)(b) with a baton or asp. While Sgt. Costin and PO Crain tried to handcuff § 87(2)(b) he was flailing his arms and legs, fighting and refusing to be handcuffed, throwing punches and kicking. Sgt. Costin was grappling with § 87(2)(b) trying to get him under control. Sgt. Costin did not throw any punches at § 87(2)(b). The other civilians started coming towards the officers and Sgt. Costin told them to get back. PO Wells called for additional units during this struggle, but Sgt. Costin was not sure exactly where she was. The officers finally handcuffed § 87(2)(b). Sgt. Costin did not recall exactly how long the struggle with § 87(2)(b) lasted. § 87(2)(b) suffered a laceration to his face during the fight. Sgt. Costin did not see what caused the injury. None of the officers were injured during this struggle. Numerous units came to the scene, including Lt. Connolly.

When additional units arrived, the three other civilians were placed under arrest for § 87(2)(b) because they refused to be handcuffed. At that point, an officer did look into the open doorway and searched the lungable area of the vehicle. EMS was called to respond to the scene. Sgt. Costin did not see § 87(2)(b) lose consciousness at the scene. An officer went with § 87(2)(b) to the hospital, but Sgt. Costin did not recall which officer did so. PO Wells processed the arrests.

PO Christopher Crain

PO Crain from the 40th Precinct is a § 87(2)(b) year old white Hispanic male, who is 5'7" tall, weighs 170 pounds, and has blond hair and brown eyes. PO Crain worked from 10PM on May 25, 2007 to 6:35AM on May 26, 2007. He was assigned to midnight conditions; he was working in uniform with Sgt. Costin and PO Wells.

Memo Book

In his memo book (encl. 10) PO Crain wrote: "0330: 10-85 @ E. 138St + Park Ave. 0347: 4 under (Wells). 0455: Transported perp to § 87(2)(b) 0630: Relieved by PO Mata." [Sic]

CCRB Statement

PO Crain was interviewed on December 20, 2007 (encl. 11). About twenty minutes before the incident, they drove past the club Sin City and observed a fight break out. There had been no radio calls about the fight. The officers told the individuals to disperse and they obeyed.

Later on they saw an abandoned car in the middle of the street on 138th Street and Park Avenue. The car's engine was running and one of the doors was open. The officers stopped and approached the vehicle. PO Crain was looking into the vehicle from the open doorway. PO Crain did not recall going into the car or breaking the plane of the vehicle. He was the only officer by the car. A minute or two later, a male and female (identified as § 87(2)(b)) approached them to ask why the officers were going through their car. Sgt. Costin and PO Wells stopped them. The officers questioned them about the vehicle's ownership and what they were doing. PO Crain believed that the Hispanic male stated that he was the owner of the vehicle (identified as § 87(2)(b)). The couple was originally agitated but was compliant with the officers.

A group of four males came from the direction of Sin City. Two of the males broke off from that group and approached the officers. The two males were belligerent and intoxicated. PO Crain recognized them as having been involved in the earlier fight at Sin City. PO Crain warned Sgt. Costin to watch his back because the men were approaching him. Sgt. Costin told the two males to step on the sidewalk and to keep their hands out of their pockets. The dark-skinned male (identified as § 87(2)(b)) took a step towards Sgt. Costin and would not step back when instructed by Sgt. Costin. PO Crain did not recall § 87(2)(b) or anyone else having been frisked at this point. PO Crain believed that no steps had been taken to try to frisk § 87(2)(b). § 87(2)(b) then took a swing and hit Sgt. Costin. PO Crain believed that Sgt. Costin was hit in the face. § 87(2)(b) pushed Sgt. Costin off a ledge as he hit him; causing Sgt. Costin to fall backwards and § 87(2)(b) fell on top of the sergeant, still fighting the sergeant.

PO Crain ran to the scuffle, took out his asp and struck § 87(2)(b) to get him off the top of the sergeant. PO Crain struck § 87(2)(b) about his midsection and arm area. The blow was succeeded in forcing § 87(2)(b) partly off Sgt. Costin. He never struck § 87(2)(b) with the asp on the head or the face. PO Wells also came over and the two officers got on top of § 87(2)(b) while Sgt. Costin got out from under him. PO Crain and PO Wells had § 87(2)(b)'s arms, but he kept trying to flail his arms and was kicking with his legs. Sgt. Costin joined them and all three were participating in trying to handcuff § 87(2)(b).

The other three people were yelling and moving towards them, so PO Wells jumped up and backed the other people off. An 85 was called because these other civilians were going to try to get involved. PO Crain did not recall which officer called the 85. Several additional units arrived as they got § 87(2)(b) in handcuffs. PO Crain stated that there were plain clothed officers as well as uniformed officers. PO Crain was not sure from which commands they came and did not recall if any other supervisors beyond Sgt. Costin arrived at the scene. EMS was called the scene because § 87(2)(b) was bleeding from his face. PO Crain did not know how § 87(2)(b) suffered this injury. PO Crain did not see § 87(2)(b) lose consciousness. The other three individuals were handcuffed after all the other units arrived, so he was not sure who handcuffed the other three individuals. PO Crain was not injured by the fight, and neither was PO Wells. PO Crain did not see any injuries on Sgt. Costin. An ambulance arrived shortly and PO Crain went in the ambulance with § 87(2)(b) to the hospital. The other three were placed in RMP's to transport them. PO Crain stayed with § 87(2)(b) in the hospital until he was released. PO Wells was the arresting officer and the other three individuals were charged with § 87(2)(b). PO Crain did not fill out any line of duty paperwork related to this fight.

PO Latraviota Wells

PO Wells of the 40th Precinct is a § 87(2)(b) year old black female who is 5'6" tall, weighs 195 pounds, and has black hair and brown eyes. PO Wells worked from 8PM on May 25, 2007 until 4:35AM on May 26, 2007. PO Wells was in uniform, and was assigned to the Conditions unit, working with PO Crain and Sgt. Costin.

Complaint Report

In the complaint report filed by PO Wells (encl.12) for the arrests of § 87(2)(b) and § 87(2)(b) PO Wells wrote: “§ 87(2)(a) 160.50
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”
[Sic]

Arrest Reports

In the arrest reports for § 87(2)(b) and § 87(2)(b) (encl. 13), PO Wells wrote the same narrative as in the complaint report. § 87(2)(b) was being charged with § 87(2)(a) 160.50. The other three civilians were charged with § 87(2)(a) 160.50. In all four reports PO Wells noted that physical force was used to restrain, control, and remove the suspects.

CCRB Interview

PO Wells was interviewed on January 2, 2008 (encl. 14). The officers were circling the area when they saw a dispute between some individuals and a bouncer in front of Sin City. The officers dispersed the group who got into their car and left. The officers also left. About ten to twenty minutes later the officers saw a car parked a block away, at 138th Street and Park Avenue. The car was double-parked, the engine was running and the drivers' door was open, though PO Wells did not recall if the passenger side door was open. There was no one inside the car or standing by the vehicle. This same car had been double-parked in front of Sin City during the argument the officers had witnessed earlier, and PO Wells had seen a couple of people from across the street. The officers stopped their vehicle and PO Wells and PO Crain went over and looked inside the vehicle. The officers were using their flashlights to look inside the vehicle. PO Crain was in the drivers' side and PO Wells by the passengers' side. PO Wells did not recall what Sgt. Costin was doing at this time. PO Wells then observed around seven or eight people crossing the street. PO Wells stated that at around 3:47AM Sin City is about to close and a crowd of people walk down the street. One of those persons crossing the street, a Hispanic male, claimed to be the owner of the car. PO Wells asked this individual for registration and insurance for the vehicle. PO Wells did not recall if any other officer spoke to him. PO Wells identified this individual as § 87(2)(b) after looking at photos of the victims.

The group started to get rowdy, so the officers asked the crowd to stand to the side, and a few people were frisked to ensure the safety of the situation. PO Wells stated that four or five people were frisked, and she stated these were individuals who kept crowding around the officers as they spoke to § 87(2)(b). The fact that they would not comply with orders to back away made PO Wells want to make sure none of these individuals had weapons. PO Wells stated that there was a Hispanic female who was part of the group. PO Wells identified this female as § 87(2)(b) after looking at photos of the victims. PO Wells frisked § 87(2)(b) § 87(2)(b) was more agitated than the males in the group. PO Wells did not recall seeing PO Crain or Sgt. Costin frisk anyone. She later identified § 87(2)(b) from a photograph and stated that PO Crain had been frisking § 87(2)(b). The officers were about two arm lengths from each other and the car. As PO Wells was frisking § 87(2)(b) she saw a dark skinned male, black or black Hispanic, crossing the street and saw Sgt. Costin go talk to this man. PO Wells identified this male as § 87(2)(b) after looking at photographs. PO Wells did not hear what Sgt. Costin said to § 87(2)(b). The two were on the street.

When she looked back again, she saw § 87(2)(b) swing at Sgt. Costin. PO Wells did not know if the punch struck Sgt. Costin, and then Sgt. Costin fell and hit the ground. PO Wells reached for her radio and placed an 85 call for additional units. § 87(2)(b) was on top of Sgt. Costin. PO Wells and PO Crain then went over to help Sgt. Costin. PO Wells did not have a baton or asp that day. Her radio was put away when she went to help Sgt. Costin. She did not see PO Crain take out his baton or strike § 87(2)(b) with a baton. She did not see Sgt. Costin strike § 87(2)(b) with a baton. § 87(2)(b) struck Sgt. Costin while he was on the ground with a closed fist. PO Wells did not see Sgt. Costin punch § 87(2)(b) back. PO Wells and PO Crain

were trying to pull § 87(2)(b) off Sgt. Costin and place his hands behind his back to arrest him. § 87(2)(b) would not put his hands behind his back. § 87(2)(b) was moving around, resisting being handcuffed, and at one point during the incident he got turned around. The officers and § 87(2)(b) were rolling in the concrete. Some individuals were behind the officers, and someone grabbed PO Wells's shirt. At that point additional units arrived and dispersed the crowd. When the officers pulled § 87(2)(b) up they saw that he had a cut on his head and was bleeding from the head. PO Wells recalled the injury being to § 87(2)(b)'s forehead. PO Wells did not know how § 87(2)(b) sustained this injury, but believed it might have resulted from rolling around on the pavement. None of the officers were injured in the fight.

Either three or four individuals from the crowd were arrested with § 87(2)(b). These individuals were arrested for § 87(2)(a) 160.50. PO Wells helped to handcuff only § 87(2)(b). § 87(2)(b) did not lose consciousness. PO Wells did not recall which officer accompanied § 87(2)(b) to the hospital but she returned to the precinct. PO Wells processed the arrests.

Medical Records

Photos of Injuries

§ 87(2)(b) provided several photos taken by § 87(2)(b)'s brother at his home on May 27, 2007 (encl. 6). These photos show a scar running from the bridge of § 87(2)(b)'s nose down the left side of his nose, and a vertical scar on the far left side of § 87(2)(b)'s upper lip. A photo showed a stitch in § 87(2)(b)'s lip. Other photos show what § 87(2)(b) alleged were bruises on his right side of the face, the spot on the crown of his head where he was struck by a baton, and other markings and scratches on his body. He also had photos of what § 87(2)(b) stated were blood stains on the red shirt he wore that night.

§ 87(2)(b) records

According to the Ambulance Call Report, On May 26, 2007 EMT's found § 87(2)(b) sitting on curb in police custody. § 87(2)(b) was alert and oriented. § 87(2)(b) complained of a laceration to face, superior to left lip. The EMT's found a ½ cm laceration to his superior to left lip. All of § 87(2)(b)'s teeth were accounted for. EMT's found no sign of loss of consciousness or other conditions. § 87(2)(b) also complained of hand pain near where he was handcuffed. The EMT's wrote that § 87(2)(b) sustained his injuries while being subdued by the police. § 87(2)(b) was transported to the emergency room for evaluation with a police officer on board. The ambulance left the location at § 87(2)(b) and arrived at the hospital two minutes later.

At § 87(2)(b) the Emergency Department at the § 87(2)(b) conducted triage to assess § 87(2)(b)'s condition. They noted that he was in police custody, and that he had a swelling to his face and dry blood in his mouth. An examination revealed a laceration to his lower lip and swelling to the bridge of his nose. There was no loss of consciousness. Immediate surgery was recommended. A report for a surgical emergency procedure was dated at § 87(2)(b). At § 87(2)(b) § 87(2)(b) was examined. The examiner noted that according to the Police § 87(2)(b) had an altercation with the Police and he attacked an officer while acting in an erratic manner. § 87(2)(b) claimed to be unable to remember what had happened. The examiner questioned if there was a loss of consciousness and found § 87(2)(b) to be aware, alert, and oriented, and reported a 1cm laceration to § 87(2)(b)'s upper lip that went through and through, and nasal lacerations. § 87(2)(b) had no other complaints. § 87(2)(b) was diagnosed as having suffered an upper lip laceration and a nasal contusion and abrasion with edema as a result of an assault. § 87(2)(b) was prescribed a Tetanus shot, as well as 500mg of PerVic and 400mg of Motrin. § 87(2)(b) was examined again at 10AM, to check on the status of the sutures he received. § 87(2)(b) was ambulatory when he was discharged.

The pre-arraignment screening form noted a laceration to § 87(2)(b)'s lip. § 87(2)(b) admitted to using marijuana and that he was receiving treatment for Tetanus. The EMT's noted that § 87(2)(b) had received stitches to his upper lip at the emergency room in § 87(2)(b). No injuries were noted for § 87(2)(b) or § 87(2)(b) (Encl. 15)

Police Documents

SPRINT Report and Communications Records

According to the SPRINT report and a transcription of the communication records (encl. 16), at 3:32AM a unit called an 85. This call was made by a female officer, and a loud commotion could be heard in the background. Several units asked for the location of the incident, which was 138th Street and Park Avenue. Very soon after a conditions sergeant reported someone in custody and asked for an ambulance to respond to the scene. The ambulance arrived at 3:37AM. At the same time the 40th Precinct Conditions unit

reported that they had four people under arrest. At § 87(2)(b) it was reported that the ambulance had arrived at § 87(2)(b).

40th Precinct Roll Call

According to the tour 1 roll call for the 40th Precinct on May 26, 2007 (encl. 17), Sgt. Costin was the Conditions supervisor. PO Wells and a PO Gonzalez were originally scheduled to work for conditions, but PO Gonzalez had a chart change and he was replaced by PO Crain.

Prisoner Holding Pen Roster

According to the 40th Precinct prisoner holding pen roster (encl. 18) § 87(2)(b) and § 87(2)(b) were recorded as having been placed in the cells at 3:55AM. PO Wells was the officer guarding them. § 87(2)(b) was mistakenly categorized as female. § 87(2)(b) and § 87(2)(b) were transported to Bronx Central Booking at 12:10PM. The roster noted that § 87(2)(b) had been taken from the scene to § 87(2)(b) and then from § 87(2)(b) to Bronx Central Booking at 9:30AM. It was also noted that § 87(2)(b) was returned to the precinct at 10:55AM.

Arrest Photographs

§ 87(2)(b)'s arrest photograph (encl. 19) shows a scar running from the bridge of his nose down the left side of the nose to the upper nostril. There is also a vertical scar on the far left side of § 87(2)(b)'s lip. No other injuries are visible. The arrests photographs (encl.) for § 87(2)(b) and § 87(2)(b) showed no injuries.

Arrest Vouchers

PO Wells vouchered § 87(2)(b)'s cell phone, § 87(2)(b)'s cell phone, and § 87(2)(b)'s cell phone for safe keeping. (Encl. 20)

Civil Lawsuit

As noted above, § 87(2)(b) has filed a Notice of Claim against the City of New York. The Notice of Claim was received by the City on § 87(2)(b) and it seeks \$10,000,000 in damages. (Encl. 21)

Officer CCRB Histories

Neither of the subject officers has had any allegations substantiated against them that have led to the imposition of discipline. (Encl. 2)

Disposition of Arrests

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian Criminal Conviction Histories

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Undisputed Facts

§ 87(2)(b) and § 87(2)(b) were stopped by Sgt. Costin, PO Crain, and PO Wells at east 138th Street and Park Avenue. PO Crain looked into § 87(2)(b)'s car. Sgt. Costin ordered § 87(2)(b) to get up against the wall and § 87(2)(b) did not comply. Sgt. Costin then tried to place § 87(2)(b) against the wall, but § 87(2)(b) resisted. § 87(2)(b) and Sgt. Costin went down to the ground, with § 87(2)(b) landing on top of Sgt. Costin. PO Crain and PO Wells helped Sgt. Costin to bring § 87(2)(b) to the ground to handcuff him. PO Crain struck § 87(2)(b) with an asp while doing so.

Disputed Facts

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g) § 87(2)(b) filed his complaint almost two months after the incident, and did so only after he started the process of filing a ten million dollar lawsuit against the City, which gives him a clear financial motive to exaggerate actions by the police. § 87(2)(b) claimed that he passed out after being kicked in the face and being struck in the head with a baton. The emergency medical technicians who treated him at the scene found him to be alert, aware, and oriented and noted that he did not lose consciousness. So did those medical personnel that examined him at § 87(2)(b) § 87(2)(b), though § 87(2)(b) first made his claim of being unable to recall the incident to doctors at § 87(2)(b) § 87(2)(b). § 87(2)(b) also denied having been in any sort of disagreement or altercation at Sin City, yet acknowledged having left the club without paying, and then having to go back to pay. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) Sgt. Costin stated that he initially questioned § 87(2)(b) and § 87(2)(b) because of their possible involvement in the argument at Sin City, and that these two were standing by § 87(2)(b)'s vehicle from the beginning of the incident. PO Crain and PO Wells both claimed that the officers stopped to check out why § 87(2)(b)'s vehicle had been abandoned in the middle of the street while the engine was running and one of the doors was open. None of the officers could provide any explanation for § 87(2)(b)'s significant injuries. The force officers admitted to using might explain the contusion and abrasions to § 87(2)(b)'s nose, but not the laceration to his lip.

§ 87(2)(b) was the only civilian to provide a statement regarding the incident. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) PO Crain admitted to having gone to the open front drivers' side door of the vehicle and having looked inside while § 87(2)(b) claimed that he was searching the front passengers' side of the vehicle. He did not recall breaking the plane of the vehicle, and stated that this door was already open. PO Well's testimony corroborated PO Crain's testimony, but Sgt. Costin stated that it was the passenger's side door that was open, and could not recall any officer looking inside. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)

Sgt. Costin and § 87(2)(b)'s testimony regarding their initial interaction was similar. In both accounts, § 87(2)(b) approached Sgt. Costin to enquire about § 87(2)(b) and § 87(2)(b) while Sgt. Costin and his officers were engaged in a street stop. § 87(2)(b) claimed that Sgt. Costin then ordered him against the wall, and he refused. Sgt. Costin agreed, but stated that this was because § 87(2)(b) was being loud, was cursing, and was being combative. § 87(2)(b) did not deny being verbally combative and he admitted refusing to obey Sgt. Costin.

According to § 87(2)(b) after he shrugged off Sgt. Costin's attempt to force him against the wall, Sgt. Costin grabbed him in a bear hug and was trying to force him to the ground. Sgt. Costin claimed that § 87(2)(b) grabbed him and swung at him, making him fall. Both PO Wells and PO Crain corroborated the attempted punch but by the time § 87(2)(b) was arraigned any charge of assault had been dropped, and Sgt.

Costin failed to mention this attempted assault in his memo book. PO Wells stated that she had not seen the beginning of the physical interaction between § 87(2)(b) and Sgt. Costin, while PO Crain's testimony did not match either § 87(2)(b)'s or Sgt. Costin's testimony. In the arrest report PO Wells stated that § 87(2)(b)'s punch struck Sgt. Costin, but in their testimony none of the officers could recall this having happened. Given § 87(2)(g)

§ 87(2)(b) alleged that he was struck on the head with a baton by an unknown officer who he could not identify because he was down on the ground facing downward as officers were trying to handcuff him. PO Crain admitted that he struck § 87(2)(b) on the body with an asp but stated that he did so in order to help get § 87(2)(b) off Sgt. Costin. Neither of the other officers saw PO Crain use an asp, and denied using an asp themselves, though Sgt. Costin stated that PO Crain told him he had used an asp during the incident.

§ 87(2)(g)

§ 87(2)(b) claimed to the CCRB that he was kicked in the mouth by an officer, but he could not state which officer did so because at the time he was facing downward while on the ground. § 87(2)(b) said nothing about being kicked in the face to medical personnel on the day of the incident, and his claim that he lost consciousness right after this is contradicted by the medical records. The only officer who admitted to striking § 87(2)(b) was PO Crain, but with his asp, as noted above. § 87(2)(g)

Allegation A: Sgt. John Costin stopped § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) did not cooperate with the investigation. § 87(2)(g)

Allegation B: PO Christopher Crain searched § 87(2)(b)'s car.

PO Crain admitted to walking up to the open drivers' side door of § 87(2)(b)'s vehicle and having looked inside. According to PO Crain the vehicle was running but had been abandoned in the middle of the street at the time. According to Kamins (encl. 1), if a car is unoccupied, breaking the plane of the vehicle constitutes a search. An example given is an officer opening the car's door to look for a VIN number inside. In this case, PO Crain claimed that the door was already opened, and he did not recall whether his body broke the plane of the vehicle as he looked inside.

§ 87(2)(g)

Allegation C: PO Christopher Crain stopped § 87(2)(b)

Allegation D: PO Christopher Crain frisked § 87(2)(b)

§ 87(2)(b) did not cooperate with the investigation. § 87(2)(g)

Allegation E: Sgt. John Costin stopped § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) approached Sgt. Costin while the officers were interacting with § 87(2)(b) and § 87(2)(b). Sgt. Costin admitted to having asked § 87(2)(b) to get up against the wall, and Sgt. Costin placed his hand on § 87(2)(b) to force him towards the wall when § 87(2)(b) refused to follow his orders. By ordering § 87(2)(b) to get up against the wall and then trying to use physical force to place § 87(2)(b) against the wall Sgt. Costin conducted a forcible stop of § 87(2)(b). According to Kamins (encl. 1), in order to carry out a level three stop of an individual, an officer must have reasonable suspicion that a suspect committed, is committing, or is about to commit a crime.

It is undisputed that the officers were engaged in a street stop of § 87(2)(b) and § 87(2)(b) at the time that § 87(2)(b) approached them. § 87(2)(g)

§ 87(2)(g)

Allegation F: Sgt. John Costin used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation G: PO Christopher Crain used physical force against § 87(2)(b)

§ 87(2)(b) did not cooperate with the investigation. § 87(2)(g)

Allegation H: PO Christopher Crain struck § 87(2)(b) with an asp.

§ 87(2)(b) claimed that once the officers had him face down on the floor and were trying to handcuff him, an officer whom he could not see struck him on the head with two blows from a baton. PO Crain admitted to striking § 87(2)(b) with his asp, but stated that he struck § 87(2)(b)'s body to help get § 87(2)(b) off Sgt. Costin. The medical records showed no injuries to § 87(2)(b)'s body nor his head, where § 87(2)(b) claimed he was struck. Sgt. Costin and PO Wells could not corroborate PO Crain's claim that he struck § 87(2)(b) on the body and both PO Wells and Sgt. Costin denied having struck § 87(2)(b) with asps. § 87(2)(g)

Allegation I: An officer used physical force against § 87(2)(b)

According to § 87(2)(b) soon after being struck with the asp, he was kicked in the corner of his mouth, in the place where he suffered the laceration to his lip, and then he became unconscious. § 87(2)(g) he never told medical personnel that he had been kicked in the face. At the same time, none of the officers could account for how § 87(2)(b) suffered the injury to his mouth requiring stitches.

§ 87(2)(b) stated that he could not see the officer who allegedly kicked him because his face was down on the ground and he was being made to look down. No officer admitted to having used this kind of force against § 87(2)(b) and none of them stated to having seen the other officers use this kind of force against § 87(2)(b). § 87(2)(g)

Investigator:
Gabriel Paniza

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: